

EXHIBIT PPP

08/29/2005 13:51 8085992979

MATSUI CHUNG

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

AUG 29 2005

at _____ o'clock and 05 min. P M
SUE BEITIA, CLERK

DISCOVERY MASTER

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;) CIVIL NO. CV03-00385 SOM LEK
) (Copyright)
Plaintiff,)
)
vs.)
)
HAWAIIAN EXPRESS SERVICE,) ORDER DENYING PLAINTIFF'S
INC., a California corporation; H.E.S.) REQUEST FOR F-1 PROGRAM
TRANSPORTATION SERVICES, INC.,) MATERIALS
a California corporation; CALIFORNIA)
PACIFIC CONSOLIDATORS, INC., a)
California corporation; JEFFREY P.)
GRAHAM and PETER SCHAUL,)
California citizens; MARK DILLON and)
TERESA NOA, BRIAN)
CHRISTENSEN, Hawaii citizens;)
FLEMING COMPANIES, INC., an)
Oklahoma corporation; C&S)
LOGISTICS OF HAWAII, LLC, a)
Delaware LLC; C&S WHOLESALE)
GROCERS, INC., a Vermont)
corporation; C&S ACQUISITIONS,)

LLC; FOODLAND SUPER MARKET,)
 LIMITED, a Hawaii corporation;)
 HAWAII TRANSFER COMPANY,)
 LIMITED, a Hawaii corporation;)
 RICHARD COHEN, a New Hampshire)
 citizen, ES3, LLC, Delaware Limited)
 Liability Company, MELVIN PONCE,)
 SONIA PURDY, JUSTIN FUKUMOTO,))
 AFREDDA WAIOLAMA,)
 JACQUELINE RIO, Hawaii citizens;)
 JESSIE GONZALES,)
 (CAPTION CONTINUED))
 LUIZ RODRIGUES, AL PEREZ,)
 PATRICK HIRAYAMA, California)
 citizens; GUIDANCE SOFTWARE,)
 LLC, a California LLC; MICHAEL)
 GURZI, a California citizen; ALIX)
 PARTNERS, LLC a Delaware LLC;)
 DOE INDIVIDUALS 2-350; DOE)
 PARTNERSHIPS, CORPORATIONS)
 and OTHER DOE ENTITIES 2-20,)
)
 Defendants.)
)

**ORDER DENYING PLAINTIFF'S
 REQUEST FOR F-1 PROGRAM MATERIALS**

Plaintiff WANYE BERRY submitted a request for the production of
 Fleming Companies' F-1 Program Materials, as "Confidential", dated August 12,
 2005; and

Defendant FLEMING COMPANIES, INC.'s Post Confirmation Trust
 ("PCT") submitted a letter in opposition to Plaintiff's request, dated August 16,
 2005; and

Plaintiff submitted a reply letter dated August 17, 2005; and

Plaintiff and PCT requested sanctions against the other; and

No other party submitted a position regarding this issue; and

Having reviewed the memoranda presented; now, therefore, good
cause appearing,

It is hereby ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff's request is denied because the request does not appear to be reasonably calculated to lead to the discovery of admissible evidence relevant to the issue of damages for the period April 1, 2003 - June 9, 2003.
2. This denial is without prejudice, and Plaintiff will be permitted to renew his request, with additional information tending to show (1) that the F-1 project was operational, (2) that it was used by Fleming during the relevant time period, (3) that the Berry Freight Control System was incorporated into the F-1 project, and (4) how the F-1 project is relevant to the issue of damages for the period April 1, 2003 - June 9, 2003.
3. Plaintiff's request for sanctions is denied.
4. The PCT's request for sanctions is granted. Plaintiff shall, no later than September 15, 2005, reimburse the PCT \$1,200.00 for the fees incurred by the PCT in addressing Plaintiff's request, which did not sufficiently include the information noted in Order No. 2, above. Such information is necessary to address Plaintiff's request. A request absent such necessary information, therefore, resulted in a waste of time and effort.

DATED: HONOLULU, HAWAII, August 29, 2005.



CLYDE Wm. MATSUI
Discovery Master

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DATE: August 29, 2005

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ASK FOR: Kathy

RE: Wayne Berry v. Hawaiian Express Service, et al.
 Civil No. CV03-00385 SOM-LEK

ATTACHMENT(S): ORDER DENYING PLAINTIFF'S REQUEST FOR
 F-1 PROGRAM MATERIALS